

## Internal Revenue Service

Number: **200802011**

Release Date: 1/11/2008

Index Number: 355.00-00, 355.01-00,  
368.05-00, 368.04-00,  
368.06-00, 1361.03-01,  
1363.04-00, 1374.00-00.

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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PLR-128007-07

Date:  
October 11, 2007

### LEGEND:

OldDistributing =

NewDistributing =

Controlled =

StateA =

StateB =

Year1 =

Proposed LLC  
Agreement for  
Controlled =

Proposed LLC        =  
Agreement for  
NewDistributing

BusinessA        =

LocationA        =

BusinessB        =

LocationB        =

ShareholderA        =

ShareholderB        =

ShareholderC        =

Children        =

e        =

f        =

g        =

Dear        :

This letter responds to your representative's letter of 14 June 2007 requesting rulings as to the Federal income tax consequences of proposed transactions. The

information submitted in that letter and subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations that were submitted on behalf of the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding: (I) whether the distribution described below satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (II) whether the distribution is used principally as a device for the distribution of the earnings and profits of the distributing company or the controlled company or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d) of the regulations); (III) whether this distribution is part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent (50%) or greater interest in OldDistributing, NewDistributing, or Controlled (see § 355(e) of the Code and § 1.355-7 of the regulations); and (IV) whether each of the entities that is intended to be formed as a limited liability company (an "LLC") will in fact be formed as intended. Moreover, no opinion is expressed on the validity of any subchapter S election of either OldDistributing, NewDistributing, or Controlled. In addition, no opinion is expressed with regard to the tax consequences of the Unrelated Transaction described below.

### SUMMARY OF FACTS

OldDistributing is a closely held StateA corporation that uses the accrual method of accounting and a calendar year and has been an S corporation since Year1. Distributing is engaged in BusinessA and BusinessB. OldDistributing has outstanding e shares of common stock (and no other stock), all of which stock is held by ShareholderA and ShareholderB (the "Shareholders"), with ShareholderA holding f percent and Shareholder B holding g percent. The amount of stock held by ShareholderA, the major shareholder, is over 50 percent. [Pursuant to the Unrelated Transaction described below, the Shareholders may also include ShareholderC and The Children.]

NewDistributing is being formed as a StateB LLC in accord with the Proposed LLC Agreement for NewDistributing. NewDistributing will elect to be treated as an association taxable as a corporation and to be taxed as an S corporation. NewDistributing will use the accrual method of accounting and a calendar year. NewDistributing will have outstanding one class of membership interests which will be held by the Shareholders in the same manner as they hold stock in OldDistributing.

Controlled is being formed as a StateB LLC in accord with the Proposed LLC Agreement for Controlled. Controlled will elect to be treated as an association taxable as a corporation and to be taxed as an S corporation. Controlled will use the accrual method of accounting and a calendar year. Controlled will have outstanding one class of membership interests. Initially, all the membership interests in Controlled will be held by Distributing.

Management of Distributing has represented that operating BusinessA and BusinessB in separate entities would facilitate one or more corporate business purposes. To achieve this separation, Distributing will transfer BusinessA to Controlled in exchange for all the membership interests in Controlled and then will distribute all the membership interests in Controlled to the Shareholders. The businesses will be operated at separate locations with BusinessA being operated at LocationA and BusinessB being operated at LocationB.

Financial information submitted by OldDistributing indicates that each of both OldDistributing's BusinessA and OldDistributing's BusinessB has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past 5 years.

#### UNRELATED TRANSACTION

It is possible that ShareholderA will undertake an unrelated transaction ("Unrelated Transaction"). In this transaction, ShareholderA is planning to transfer a part of the stock it holds in OldDistributing to ShareholderC and The Children or, alternatively, to transfer to ShareholderC and The Children a part of the membership interests it is receiving in NewDistributing. [Shareholder A is related to ShareholderC and The Children.] Thus, in the event the Unrelated Transaction occurs prior to the Proposed Transaction discussed below, the Shareholders participating in the Proposed Transaction would include ShareholderC and The Children.

#### PROPOSED TRANSACTIONS: CONTRIBUTION, DISTRIBUTION, S ELECTION, MERGER TO CHANGE PLACE AND IDENTITY, AND LLC AGREEMENTS

It is proposed that the steps ("Steps") in the Proposed Transactions be undertaken in the order described below. It is planned to take Step (IV) subsequent to Steps (I), (II) and (III). However, depending on circumstances and business exigencies, it is possible that Step (IV) would be taken first, that is prior to Steps (I), (II), and (III). If Step (IV) is taken first, then OldDistributing will have been replaced by NewDistributing in undertaking Steps (I), (II), and (III). Accordingly, hereafter, OldDistributing is referred to as "OldDistributing (or NewDistributing)" for purposes of Steps (I), (II), and (III).

With regard to timing, it is planned for Step (II), The Distribution, to be undertaken immediately after Step (I), The Contribution, so that subsequent to The

Contribution, OldDistributing (or NewDistributing) will have only a momentary ownership of Controlled.

Step (I). The Contribution. OldDistributing (or NewDistributing) will transfer to Controlled the assets of BusinessA (including real property and equipment) and liabilities associated with BusinessA in exchange for all the membership interests in Controlled.

Step (II). The Distribution. OldDistributing (or NewDistributing) will distribute to the Shareholders all of the outstanding membership interests in Controlled. The distribution of the membership interests in Controlled will be pro rata to each of the Shareholders and the Shareholders will not surrender any of the stock or membership interests in OldDistributing (or NewDistributing). Following The Distribution, the outstanding membership interests in Controlled will be held by the Shareholders in exactly the same percentages as they hold their stock in OldDistributing (or membership interests in NewDistributing).

Step (III). The S Election. Controlled will make an election under § 1362(a) to be treated as an S corporation (within the meaning of § 1361(a)). The Shareholders will cause Controlled to file Form 2553, "Election by a Small Business Corporation," for the purpose of causing Controlled to be treated as an association taxable as an S corporation from its inception.

Step (IV). The Merger. OldDistributing will merge into NewDistributing in accord with the applicable state law, with NewDistributing electing to be an association taxable as an S corporation. NewDistributing will receive all the assets and liabilities of OldDistributing [except for assets and liabilities transferred to Controlled] and the Shareholders will receive NewDistributing membership interests in exchange for their OldDistributing stock.

Step (V). The LLC Operating Agreements. Operating agreements both for New Distributing and for Controlled will be executed to provide that for each of these LLCs all items of income and loss will be allocated among the members pro rata in accordance with their percentage membership interests in the respective LLCs, and all distributions (both liquidating and nonliquidating) will be made in accordance with their percentage membership interests.

## REPRESENTATIONS

OldDistributing and its controlling shareholder, ShareholderA, have made the following representations in connection with the Proposed Transactions.

Representations relating to the entire transaction.

(a) The Unrelated Transaction has a motivation independent and separate from the motivation for the Proposed Transactions.

(b) The Proposed Transactions (Steps (I), (II), (III), (IV), and (V)) are not related to, or connected to, or part of a plan involving any other transactions. At the time the Proposed Transactions are undertaken there will be no plan or intent to undertake any other transactions (except for the Unrelated Transaction).

(c) OldDistributing/NewDistributing, Controlled, and each of the Shareholders will each pay his, her, or its own expenses incurred in connection with the Proposed Transactions.

(d) OldDistributing will have been an S corporation at all times subsequent to Year1.

(e) OldDistributing has outstanding solely a single class of common stock.

(f) Controlled and NewDistributing will each have outstanding solely a single class of membership interests.

(g) At the time of the Proposed Transactions, neither OldDistributing, NewDistributing, nor Controlled will have outstanding any debt or convertible securities, warrants or options, or any other type of right or instrument, where such right or instrument constitutes an equity interest in OldDistributing, NewDistributing, or Controlled, or where pursuant to such right or instrument any person could acquire an equity interest in OldDistributing, NewDistributing, or Controlled.

(h) There is no plan or intention for either OldDistributing, NewDistributing, or Controlled to issue any stock or membership interests in conjunction with or subsequent to the Proposed Transactions, except as described above in Steps (I) through (V).

(i) Neither OldDistributing, NewDistributing, nor Controlled is, or will be, an investment company as defined in § 368(a)(2)(F)(iii) and (iv).

Representations relating to Steps (I) and (II), The Contribution and The Distribution.

(j) With regard to the assets transferred from OldDistributing (or NewDistributing) to Controlled, both (i) the total adjusted basis of the assets and (ii) the fair market value of the assets will each equal or exceed the sum of the liabilities (as determined under § 357(d)) assumed by Controlled.

(k) Both (i) the liabilities of OldDistributing (or NewDistributing) assumed by Controlled (as determined under § 357(d)) and (ii) the liabilities to which the transferred

assets are subject were incurred in the ordinary course of business and are associated with the assets transferred.

(l) None of any of the transfers of assets from OldDistributing (or NewDistributing) to Controlled will constitute an “early disposition of investment credit property” within the meaning of § 50(a).

(m) Prior to The Distribution, all the outstanding membership interests in Controlled will be held by OldDistributing (or NewDistributing).

(n) Following The Distribution, all of the outstanding membership interests in Controlled will be held by the Shareholders.

(o) Controlled neither has, nor is expected to have, any debt to the Shareholders, to OldDistributing, to NewDistributing, or to any related entity (except, possibly, for a small amount of pre-existing debt between BusinessA and BusinessB that arose in the normal course of business and which, if not already paid off, will be paid off within the current year).

(p) Immediately prior to The Distribution, each share of the outstanding stock in OldDistributing (or membership interest in NewDistributing) will have been held by its then current holder at all times during the 5-year period prior to The Distribution (or will have been received in a nonrecognition transaction in exchange for such 5-year stock). However, in the event that Step (IV) or the Unrelated Transaction occurs first, all the membership interests in NewDistributing will be held by Shareholders who received their membership interests in NewDistributing in exchange for stock in OldDistributing in a nonrecognition transaction such that for each of the Shareholders the holding of the membership interests together with the prior holding of the exchanged stock meets this 5-year period.

(q) In the 5-year period prior to The Distribution, there will have been no changes, and subsequent to The Distribution it is not expected that there will be any change, in the holding of stock or membership interests in OldDistributing, NewDistributing, or Controlled, except as described above with regard to the Unrelated Transaction and the Proposed Transactions.

(r) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent (50%) or greater interest (within the meaning of § 355(d)(4)) in OldDistributing, NewDistributing, or Controlled (including any predecessor or successor of any such corporation). It is planned for ShareholderA to continue to hold over 50 percent of the equity interest in both NewDistributing and Controlled.

(s) No part of the membership interests in Controlled is being received by a Shareholder as a creditor, employee or in any capacity other than as a shareholder of OldDistributing (or NewDistributing).

(t) The 5 years of financial information submitted on behalf of each of the businesses (BusinessA and BusinessB) is representative of the present operations of each business and, regarding each business, there have been no substantial operational changes since the date of the last financial statements submitted for such business.

(u) Following The Distribution, OldDistributing and/or NewDistributing will continue to be directly engaged in the active conduct of BusinessB independently and with its own separate employees (and through the actions of its own officers, directors, and/or shareholders acting on its behalf), and through the actions of certain shared employees ("Shared Employees"). Following The Distribution, no more than 20 percent of the total number of BusinessB employees will be Shared Employees. These Shared Employees will conduct certain management and/or administrative functions for BusinessB and various other businesses. BusinessB will have been actively conducted (within the meaning of § 1.355-3(b)) by OldDistributing (or NewDistributing) independently and through its own employees (and its officers, directors, and/or shareholders) at all times in the 5-year period prior to The Distribution (with Shared Employees participating only to the extent and in the manner specified above). In each year of the 5-year pre-Distribution period, OldDistributing and/or NewDistributing directly had over 50 employees who were engaged in BusinessB. It is expected that OldDistributing (or NewDistributing) will continue to directly have over 50 employees engaged in BusinessB subsequent to The Distribution.

(v) Following The Distribution, Controlled will be directly engaged in the active conduct of BusinessA independently and with its own employees (and through the actions of its own officers, directors, and/or shareholders acting on its behalf), and through the actions of certain Shared Employees. Following The Distribution, no more than 20 percent of the total number of BusinessA employees will be Shared Employees. These Shared Employees will conduct certain management and/or administrative functions for BusinessA and various other businesses. BusinessA will have been actively conducted (within the meaning of § 1.355-3(b)) by OldDistributing (and/or NewDistributing) independently and through its own employees (and its officers, directors, and/or shareholders) at all times in the 5-year period prior to The Distribution (with Shared Employees participating only to the extent and in the manner specified above). In each year of the 5-year pre-Distribution period, OldDistributing and/or NewDistributing directly had over 50 employees who were engaged in BusinessA. It is expected that Controlled will continue to directly have over 50 employees engaged in BusinessA subsequent to The Distribution.



(w) The Distribution is being carried out for one or more corporate business purposes.

(x) Except for the Step (IV) Merger of OldDistributing into NewDistributing, and, also, except for dispositions of assets in the ordinary course of business, there is no plan or intention: (i) to liquidate either OldDistributing, NewDistributing, or Controlled; (ii) to merge either OldDistributing, NewDistributing, or Controlled with any other corporation; or (iii) to sell or otherwise dispose of the assets of either OldDistributing, NewDistributing, or Controlled subsequent to The Distribution.

(y) There is no plan or commitment by any of the Shareholders to sell, exchange, transfer by gift, have redeemed or otherwise dispose of any of their stock or membership interests in OldDistributing, NewDistributing, or Controlled except as described above with regard to the Unrelated Transaction and the Proposed Transactions.

(z) The Distribution will not be used principally as a device for the distribution of earnings and profits of either OldDistributing, NewDistributing, or Controlled.

(aa) The Distribution is not intended to, or expected to, result in a reduction in the total amount of Federal income tax payable by OldDistributing and its successors. That is, the total amount of Federal income tax payable after The Distribution by OldDistributing, NewDistributing and Controlled is anticipated to be no less than the amount that would be payable by Distributing if the Proposed Transactions did not occur.

(bb) After The Distribution is consummated, any transactions that occur between Controlled and OldDistributing (or NewDistributing) will occur in the ordinary course of business and will be negotiated at arm's length and for fair market value.

(cc) There is no plan or intention by either OldDistributing, NewDistributing, or Controlled, directly or through any subsidiary or related entity, to purchase any of its outstanding stock or membership interests after The Distribution, other than through purchases meeting the requirements of Section 4.05(1)(b) of Rev. Proc. 96-30.

(dd) Neither OldDistributing, NewDistributing, nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

#### Representations as to S Elections.

(ee) None of the persons holding stock, membership interests, or any equity interest in either OldDistributing, NewDistributing, or Controlled is a nonresident alien individual, a foreign corporation, or a trust (except for trusts meeting the requirements of § 1361(c)(2)).

(ff) At the first possible opportunity, Controlled will elect to be treated as an S corporation. There will be no delay between the Contribution and the S election and the election will be made in a manner such that it is effective as of the date of the Contribution (see § 1.1361-3(a)(4) of the regulations).

(gg) OldDistributing is an S corporation (within the meaning of § 1361(a)) and it is intended for NewDistributing to be an S corporation.

(hh) There is no plan or intention to revoke or otherwise terminate the S corporation election of either OldDistributing, NewDistributing, or Controlled.

Representations with regard to Step (IV), The Merger.

The Contribution and The Distribution are disregarded for purposes of these representations regarding The Merger. That is, for purposes of these representations, regardless of whether The Merger comes before, after, or simultaneously with The Contribution and The Distribution, The Contribution and The Distribution are disregarded for purposes of determining whether there is a change in the OldDistributing and/or NewDistributing assets and liabilities.

(ii) Immediately prior to The Merger, NewDistributing will be engaged in no activity and will hold no assets (except NewDistributing may hold a minimal amount of assets if such assets are required: (i) for the purpose of paying NewDistributing's incidental expenses; and/or in order to maintain NewDistributing's status as a corporation in accord with StateB law).

(jj) Immediately following The Merger, NewDistributing will hold all the assets held by OldDistributing immediately prior to The Merger, except as further described in this representation (jj). The only change in assets occurring from The Merger will be as a result of OldDistributing and/or NewDistributing incurring filing, accounting, legal fees, and/or other expenses incident to The Merger. The total of all these Merger costs will be less than one percent (1%) of the fair market value of the net assets of OldDistributing immediately prior to The Merger.

(kk) All liabilities to which the OldDistributing assets are subject at the time of The Merger, and all liabilities of OldDistributing that are properly treated as being assumed by NewDistributing in The Merger (see § 357(d)), are liabilities that were incurred in the ordinary course of business and are associated with the assets held by OldDistributing at the time of The Merger.

(ll) The Shareholders will receive solely NewDistributing membership interests in The Merger.

(mm) Immediately following The Merger, the Shareholders will own all the membership interests in NewDistributing and they will own such membership interests solely as a result of having owned stock in OldDistributing prior to The Merger.

(nn) Following The Merger, each of the Shareholders will hold the same percentage of membership interests in NewDistributing as the percentage of stock such shareholder previously held in OldDistributing.

(oo) The Shareholders' NewDistributing membership interests received in The Merger grant them substantially the same rights as to distributions (both liquidating and nonliquidating) in NewDistributing as the rights to distributions that they held in OldDistributing as shareholders prior to The Merger.

(pp) OldDistributing is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

(qq) Following The Merger, NewDistributing will continue to be engaged in BusinessB.

(rr) The fair market value of the NewDistributing membership interests and other consideration received by each OldDistributing shareholder will be approximately equal to the fair market value of the OldDistributing stock surrendered in the exchange.

## LAW AS TO S CORPORATIONS

Section 1361(a)(1) defines an "S corporation," with respect to a taxable year, as a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not: (A) have more than 100 shareholders; (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual; (C) have a nonresident alien as a shareholder; or (D) have more than one class of stock.

Section 1.1361-1(l)(1) provides that a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2) provides that the determination of whether all outstanding shares of stock confer identical right to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law and binding agreements relating to distribution and liquidation proceeds (collectively,

the governing provisions). A commercial contractual agreement, such as a lease, employment agreement, or loan agreement, is not a binding agreement relating to distribution and liquidation proceeds and thus is not a governing provision unless a principal purpose of the arrangement is to circumvent the one class of stock requirement of § 1361(b)(1)(D) and § 1.1361-1(l).

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for Federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Rev. Rul. 64-250, 1964-2 C.B. 333, concludes that when an S corporation merges into a newly formed corporation in a transaction qualifying as a reorganization under § 368(a)(1)(F), and the newly formed surviving corporation also meets the requirements of an S corporation, the reorganization does not terminate the S election. Thus, the S election remains in effect for the new corporation.

Rev. Rul. 73-526, 1973-2 C.B. 404, concludes that the identifying number previously assigned to the transferor corporation should be used by the surviving corporation in a statutory merger qualifying as a reorganization under § 368(a)(1)(F).

## RULINGS

Based solely on the information submitted and the representations set forth above, and provided that the membership interests in Controlled and NewDistributing constitute stock, we rule as follows:

Rulings with regard to Step (I), The Contribution, and Step (II), The Distribution

(1) The transfer of assets from OldDistributing (or NewDistributing) to Controlled in The Contribution followed by The Distribution will be a reorganization within the meaning of § 368(a)(1)(D). OldDistributing (or NewDistributing) and Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

(2) No gain or loss will be recognized by OldDistributing (or NewDistributing) upon the transfer of assets to Controlled in exchange for membership interests in Controlled and the assumption of liabilities of OldDistributing (or NewDistributing) by Controlled in conjunction with The Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled on the receipt of assets of OldDistributing (or NewDistributing) in exchange for membership interests in Controlled (§ 1032(a)).

(4) The basis of each asset received by Controlled will be determined in accordance with § 362(b) and § 362(e).

(5) The holding period for each of the assets received by Controlled will include the period during which such asset was held by OldDistributing (and/or NewDistributing) (§ 1223(2)).

(6) No gain or loss will be recognized by OldDistributing (or NewDistributing) upon the distributions to the Shareholders of membership interests in Controlled in The Distribution, as described above (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) the Shareholders upon receipt of membership interests in Controlled in The Distribution (§ 355(a)(1)).

(8) For each of the Shareholders, immediately after The Distribution, the Shareholder's total bases in all the stock and membership interests held [that is, the total of (i) the basis of all the membership interests in Controlled received by such Shareholder plus (ii) the basis of the stock in OldDistributing or membership interests in NewDistributing held by such Shareholder] will be the same as the basis of the OldDistributing stock (or NewDistributing membership interests) held by such Shareholder immediately prior to The Distribution (§ 358(a)(1)). For each Shareholder, the Shareholder's total basis will be allocated among the stock of OldDistributing (or membership interests in NewDistributing) and the membership interests in Controlled in proportion to the relative fair market values of such stock and/or membership interests in accordance with § 1.358-2(a)(2).

(9) For each of the Shareholders, the holding period of the membership interests received in Controlled will include the holding period of the OldDistributing stock (or NewDistributing membership interests) with respect to which it is received, provided that the OldDistributing stock (or NewDistributing membership interests) is held as a capital asset in the hands of the Shareholder on the date of the exchange (§ 1223(1)).

(10) As provided in § 312(h) of the Code, proper allocation of earnings and profits among OldDistributing (or NewDistributing) and Controlled will be made under § 1.312-10(a).

(11) OldDistributing's (or New Distributing's) "accumulated adjustment account" (as defined in § 1368(e)(1)) immediately prior to The Distribution will be allocated

between OldDistributing (or NewDistributing) and Controlled in a manner similar to the manner in which earnings and profits are allocated in ruling (10) above under § 312(h) (§ 1.1368-2(d)(3)).

#### Rulings with regard to Step (III), The S Election by Controlled

(12) Provided that The Distribution is undertaken immediately after The Contribution, OldDistributing's (or NewDistributing's) momentary ownership of the membership interests in Controlled, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(1)(B) and will not, in itself, render Controlled ineligible to elect to be an S corporation for its first taxable year. If Controlled otherwise meets the requirements of a small business corporation under § 1361, it will be eligible to make a subchapter S election under § 1362(a) for its first taxable year, provided such election is made effective immediately following The Distribution.

(13) Section 1363(d) is applicable to an S corporation that was a C corporation for the last taxable year before the effective S election. OldDistributing has been an S corporation since Year1. If Controlled makes an effective S election under § 1362(a) for its first taxable year, Controlled will have no history of being a C corporation. Moreover, the assets of Controlled do not have a C history after Year1. Provided that Controlled makes an effective S election for its first taxable year, Controlled is not subject to § 1363(d).

(14) Neither OldDistributing, NewDistributing, nor Controlled will recognize any LIFO recapture tax pursuant to § 1363(d) and the regulations thereunder as a result of the Proposed Transactions.

(15) The Proposed LLC Agreement for Controlled, if executed in a form substantially identical to that proposed, will be considered a governing provision for purposes of § 1.1361-1(l)(2)(i), since it will be a binding agreement that defines the members' rights to distribution and liquidating proceeds. Furthermore, Controlled's LLC agreement, once executed, will not, by its terms, cause Controlled to have a second class of stock within the meaning of § 1361(b)(1)(D).

(16) Controlled will not be subject to the built-in gain provisions of § 1374, provided that the 10-year recognition period specified in § 1374(d)(7) has already expired for OldDistributing (and/or NewDistributing).

#### Rulings with regard to Step (IV), The Merger

(17) The Merger of OldDistributing into NewDistributing in which the Shareholders receive membership interests in NewDistributing in exchange for their stock in OldDistributing is a reorganization within the meaning of § 368(a)(1)(E) and

§ 368(a)(1)(F). OldDistributing and NewDistributing will each be a "party to a reorganization" within the meaning of § 368(b).

(18) No gain or loss will be recognized by OldDistributing upon the transfer of assets to NewDistributing in exchange for membership interests in NewDistributing and NewDistributing's assumption of liabilities (§§ 361(a) and 357(a)).

(19) No gain or loss will be recognized by NewDistributing on the receipt of OldDistributing assets in exchange for NewDistributing membership interests (§ 1032(a)).

(20) The basis of each asset received by NewDistributing will be the same as the basis of such asset in the hands of OldDistributing immediately prior to The Merger (§ 362(b)).

(21) The holding period for each of the assets received by NewDistributing will include the period during which such asset was held by OldDistributing (§ 1223(2)).

(22) No gain or loss will be recognized by OldDistributing upon the distribution to the Shareholders of the NewDistributing membership certificates (§ 361(c)(1)).

(23) No gain or loss will be recognized by the Shareholders upon receipt of NewDistributing membership interests in exchange for their OldDistributing stock (§ 354(a)(1)).

(24) For each of the Shareholders, the basis in the NewDistributing membership interests received will be equal to the basis of the OldDistributing stock surrendered by such shareholder in exchange therefor (§ 358(a)(1)).

(25) For each of the Shareholders, the holding period for the NewDistributing membership interests received will include the period during which such shareholder held the OldDistributing stock exchanged therefor, provided that the OldDistributing stock is held as a capital asset in the hands of such shareholder on the date of the exchange (§ 1223(1)).

(26) The Merger does not result in a closing of the tax year (§ 381(b) of the Code and § 1.381(b)-1(a)(2) of the regulations).

(27) As provided by § 381(a), NewDistributing will succeed to and take into account, as of the date The Merger is consummated, all the items of OldDistributing described in § 381(c), including any OldDistributing earnings and profits or any deficit therein.

Rulings with regard to subchapter S matters relating to NewDistributing

(28) Provided that the assets of OldDistributing are not presently subject to the built-in gain provisions of § 1374, they will continue to not be subject to the built-in gain provisions of § 1374 in the hands of NewDistributing.

(29) The Proposed LLC Agreement for NewDistributing, if executed in a form substantially identical to that proposed, will be considered a governing provision for purposes of § 1.1361-1(l)(2)(i) since it will be a binding agreement that defines the members' rights to distribution and liquidating proceeds. Further, NewDistributing's LLC agreement, once executed, will not, by its terms, cause NewDistributing to have a second class of stock within the meaning of § 1361(b)(1)(D).

(30) OldDistributing's "accumulated adjustments account" (as defined in § 1368(e)(1)) immediately prior to The Merger will be acquired by NewDistributing (§ 1.1368-2(d)(2)).

(31) The Merger (which constitutes an "F" reorganization as provided by ruling (17) above) will not result in a termination of OldDistributing's "S" election (within the meaning of § 1362), provided NewDistributing meets the requirements of an S corporation under § 1361. See Rev. Rul. 64-250, 1964-2 C.B. 333.

(32) NewDistributing, as the successor to OldDistributing in the "F" reorganization, will retain OldDistributing's previously assigned identifying number (EIN). See Rev. Rul. 73-526, 1973-2 C.B. 404.

#### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transactions [or of any other matter] under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions not specifically covered by the above rulings. In particular (as provided above), no opinion is expressed regarding: (I) whether The Distribution satisfies the business purpose requirement of § 1.355-2(b); (II) whether The Distribution is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Code and § 1.335-2(d) of the regulations); (III) whether The Distribution is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and (IV) whether each of the entities that is intended to be formed as an LLC will in fact be formed as intended. Furthermore, no opinion is expressed as to the validity of any subchapter S election. Finally, no opinion is expressed about the tax treatment of the Unrelated Transaction [page 4, above].



## PROCEDURAL STATEMENTS

This private letter ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

It is important that a copy of this letter be attached to the Federal income tax returns of each taxpayer involved for the taxable year(s) in which the transactions are consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-128007-07) of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Douglas C. Bates*  
Douglas C. Bates  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)